

FROM :Walter Beavers

FAX NO. :3362752009

Jan. 16 2007 01:44PM P1

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JAN 16 2007

PATENT LAW OFFICES
OF
WALTER L. BEAVERS
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F A C S I M I L E C O V E R L E T T E R

DATE: 16 January 2007
TOTAL NO. OF PAGES: 20 (including cover page)
TO: Office of Petitions
Mail Stop Petition
Commissioner for Patents
FAX NUMBER: 571-273-8300
RE: Patent Application Serial No. 09/295,000;
Our File No. 01855-06

Dear Sir/Madam:

Please find included herewith a Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b), Form PTO/SB/64, a fifteen (15) page response to the Office Action dated 28 March 2003, Credit Card form PTO-2038 in the amount of \$750.00 for the Petition Fee and transmittal form PTO/SB/21 for the above-identified application.

Cordially yours,

Carla L. Gannon, Esq.

CLG:ph

I hereby certify that this correspondence is being facsimile transmitted to the Office of Petitions, Mail Stop Petition, Commissioner for Patents, (20 pages including cover letter) to Fax No. (571) 273-8300 on this the 16th day of January 2007.

Carla L. Gannon

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PTO/SB/21 (09-04)

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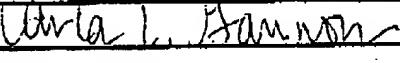
**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/295,000	
	Filing Date	16 April 1999	
	First Named Inventor	Scott D. Redmond	
	Art Unit	2683	
	Examiner Name	Melvin Marcelo	
Total Number of Pages in This Submission	20	Attorney Docket Number	01855-06

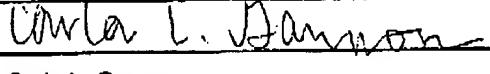
ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Facsimile cover letter (one page), Credit Card Form PTO-2038
Remarks		
The amendment comprises fifteen (15) pages. The Petition comprises two (2) pages (Form PTO/SB/64).		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	The Patent Law Offices of Walter L. Beavers		
Signature			
Printed name	Carla L. Gannon		
Date	16 January 2007	Reg. No.	56,358

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Carla L. Gannon	Date	16 January 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including the gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FROM :Walter Beavers

FAX NO.: 3362752009

Jan. 16 2007 01:45PM P4

JAN-2-2007 23:46 FROM:

TO: 13362752009

P:1/2

PTO/SB/04 (08-06)

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

01855-06

First named inventor: Scott D. Redmond

**RECEIVED
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Application No.: 09/295,000

Art Unit: 2663

Filed: 16 April 1999

Examiner: Melvin Marcelo

JAN 16 2007

Title: **MEDIA FILE DISTRIBUTION WITH
ADAPTIVE TRANSMISSION PROTOCOLS**

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of Response with claim amendments (identify type of reply):

has been filed previously on _____ 01/17/2007 TL0111 00000004 09295000
 is enclosed herewith. 01 FC:2453 750.00

B. The issue fee and publication fee (if applicable) of \$ _____
 has been paid previously on _____
 is enclosed herewith.

Page 1 of 21

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. Instead, send them to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

FROM :Walter Beavers

FAX NO. :3362752009

Jan. 16 2007 01:45PM PS

JAN-2-2007 23:47 FROM:

TO:13362752009

P:2 RECEIVED
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PTO/SB/64 (08-06)

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3. Terminal disclaimer with disclaimer fee

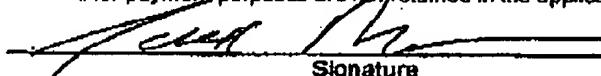
Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature

1-2-06

Date

Scott D. Redmond

Typed or printed name

Registration Number, if applicable

601 Van Ness Ave., Suite 83613

415-978-2301

Address

Telephone Number

San Francisco, CA 94102

Address

Enclosures: Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

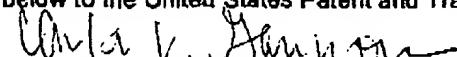
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1/16/07

Date



Signature

Carla L. Garrison

Typed or printed name of person signing certificate

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JAN 16 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of: Scott D. Redmond
Serial No.: 09/295,000
Filed: 16 April 1999
For: Media File Distribution (as amended)
Group Art Unit: 2663
Examiner: Melvin Marcelo
Attorney Docket No.: 01855-06

AMENDMENT

Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the office action mailed March 28, 2003,
please enter the following amendments and consider the
following remarks. The present response is submitted
concurrently with a *Petition for Revival of an Application
for Patent Abandoned Unintentionally Under 37 C.F.R.
§1.137(b)*.

IN THE SPECIFICATION:

Please amend the **TITLE** of the application as follows:

MEDIA FILE DISTRIBUTION WITH ~~ADAPTIVE TRANSMISSION
PROTOCOLS~~

Please amend the **BRIEF DESCRIPTION OF THE DRAWINGS** as follows:

- At page five, line six, please amend the section heading as follows:

BRIEF BRIEF DESCRIPTION OF THE DRAWINGS

- At page five, and following line twenty, please insert the following:

Figure 6A is a block diagram of removable media in an exemplary embodiment of the present invention.

IN THE CLAIMS

Please amend the claims as follows:

1.-19. (Cancelled)

20. (New) A media distribution system, comprising:

- A) a media file database configured to store media files, wherein one or more of the media files have been compressed prior to storage in the media file database;
- B) a computing device configured to receive user requests for delivery of at least one of the one or more of the media files stored in the media file database, the computing device further configured to:
 - identify average network throughput between computing device and the requesting users; and
 - route the user requests for delivery of the requested at least one of the one or more media files to a distribution server capable of servicing the user requests based upon at least the average network throughput; and
- C) a distribution server coupled to the media file database, the distribution server configured to simultaneously deliver a single copy of the requested at least one of the one or more of the media files identified in the routed user requests to the requesting users in less-than-

real-time, wherein the distribution server automatically adjusts delivery of the requested at least one of the one or more media files to the requesting users based on current average network throughput between the distribution server and the requesting users.

21. (New) The system of claim 20, wherein at least one of the one or more of the media files is divided into a plurality of frames, at least one of the plurality of frames including a header.
22. (New) The system of claim 21, wherein one or more of the media files have also been encrypted prior to storage in the media file database.
23. (New) The system of claim 22, wherein at least one of the plurality of frames includes a encryption frame key in the header.
24. (New) The system of claim 20, wherein one or more of the media files includes a digital watermark identifying a source of the one or more media files.
25. (New) The system of claim 20, wherein one or more of the media files includes a digital watermark identifying ownership of the one or more media files.
26. (New) The system of claim 20, wherein the computing device is further configured to identify a

transmission protocol for delivery of the requested at least one of the one or more media files to the requesting users.

27. (New) The system of claim 26, wherein the computing device is further configured to route the user requests for delivery of the requested at least one of the one or more media files to a distribution server capable of servicing the user requests further based upon at least the identified transmission protocol.
28. (New) The system of claim 27, wherein the identified transmission protocol includes a multicast transmission protocol and the distribution server simultaneously delivers the at least one of the one or more media files via a multicast transmission to the requesting users.
29. (New) The system of claim 28, wherein the distribution server is further configured to repeat the transmission of the at least one of the one or more media files via the multicast transmission to the requesting users until each of the requesting users has received the entirety of the at least one of the one or more media files.
30. (New) The system of claim 20, further comprising an advertisement database configured to store advertisement media files.

31. (New) The system of claim 30, wherein an advertisement media file from the advertisement database is concatenated to the at least one of the one or more media files based on at least an association parameter.
32. (New) The system of claim 20, further comprising a financial transaction server configured to process a payment for delivery of the at least one of the one or more media files requested by a user.

REMARKS**Petition for Revival of an Application for Patent Abandoned
Unintentionally Under 37 C.F.R. § 1.137(b)**

The present application became abandoned for failure to file a timely reply to an office action issued by the United States Patent and Trademark Office on 28 March 2003. As reflected by the enclosed Form PTO/SB/64, the Applicant hereby petitions for revival of this application. Enclosed with this petition are the required fees, the present reply, and a statement that the entire delay was unintentional.

Amendment to the Title

The Applicant has amended the title to better reflect the nature of the presently claimed subject matter. See 37 C.F.R. § 1.77(b)(1). No new matter is introduced through this amendment.

Objection to the Specification

The Examiner objected to the disclosure as the brief description of the drawings "fail[s] to mention Figure 6A." *Office Action*, 2. The Applicant has introduced a reference to FIGURE 6A in the Brief Description of the Drawings, which is believed to be supported by (at least) the specification's discussion of "removable media". *Specification*, p. 22, l. 14. The Applicant has also corrected a typographical error in the heading of the Brief Description of the Drawings. No new matter is introduced through these amendments and in light of the same, the

Applicant believes the Examiner's objection to have been overcome.

Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected previously pending claims 1-17 as being obvious in light of U.S. patent number 5,778,187 to Monteiro et al. and U.S. patent number 5,841,979 to Schulhof et al. See Office Action, 2. The Examiner further rejected previously pending claims 18 and 19 under Monteiro and Schulhof in further view of U.S. patent number 4,991,208 to Walker et al. The Applicant respectfully traverses these rejections in light of the newly presented claims and the remarks set forth below.

New independent claim 20 recites:

A media distribution system, comprising:

- A) a media file database configured to store media files, wherein one or more of the media files have been compressed prior to storage in the media file database;
- B) a computing device configured to receive user requests for delivery of at least one of the one or more of the media files stored in the media file database, the computing device further configured to:
 - identify average network throughput between computing device and the requesting users; and
 - route the user requests for delivery of the requested at least one of the one or more

media files to a distribution server capable of servicing the user requests based upon at least the average network throughput; and C) a distribution server coupled to the media file database, the distribution server configured to simultaneously deliver a single copy of the requested at least one of the one or more of the media files identified in the routed user requests to the requesting users in less-than-real-time, wherein the distribution server automatically adjusts delivery of the requested at least one of the one or more media files to the requesting users based on current average network throughput between the distribution server and the requesting users.

Monterio, Schulhof, and Walker (the *Cited References*)—individually and collectively—fail to disclose each and every element of the aforementioned claim. See *In re Royka*, 490 F.3d 981 (CCPA 1974); see also *In re Wilson*, 424 F.3d 1382, 1385 (CCPA 1970) (“[a]ll words in a claim must be considered in judging patentability of that claim against the prior art”).

Simultaneous Delivery of a Single Copy of Content in Less-than-Real-Time

The *Cited References* fail to disclose ‘simultaneously deliver[ing] a single copy of the requested . . . media files . . . in less-than-real-time’. For example, the Examiner referenced Monteiro’s teaching of “deliver[ing information] in **real-time** to any number of widely

distributed users." *Office Action*, 3 (citing Monteiro, col. 2, l. 12-13 (emphasis added)). Claim 20 explicitly recites delivering in **less-than-real-time**. Further, while Monteiro discusses "information . . . being sent at approximately the same time to everyone who is enabled to receive the information", there is no discussion of that information being with respect to a **single copy** as claimed by the Applicant. *Monteiro*, col. 2, l. 14-16.

As noted by the Applicant, the prior art "typically transmit[s] a **separate copy** of the streaming video file to each receiver" thereby "us[ing] additional network bandwidth for each receiver". *Specification*, p. 2, l. 2-4 (emphasis added). Such prior art systems also tend to involve "**real-time streaming** video systems and methodologies". *Specification*, p. 1, l. 17 (emphasis added). There is no suggestion in the Monteiro reference—or any of the other cited references—that they somehow depart from the lacking of the prior art including **real-time delivery of separate copies of content** thereby bogging down content delivery networks. See, e.g., *Specification*, p. 2, l. 4-6.

To the extent that Schulhof discloses "receiving and recording compressed, digitized audio programming at a transfer rate that is at least two time the normal audible playback rate so that, for example, ten hours of playback material may be transferred in a time interval of less than ten minutes to a few hours", the Applicant contends combining Shulhof with Monteiro would result in an inoperative combination. *Schulhof*, col. 4, l. 6-10. A *prima facie* case of obviousness requires a reasonable

expectation of success with respect to the combination. See *In re Merck & Co., Inc.*, 800 F.2d 1091 (Fed. Cir. 1986). Additionally, the claimed combination "cannot change the principle operation of the primary reference or render the reference inoperable for its intended purpose". MPEP § 2145.

The Applicant contends that the combination of Monteiro with Schulhof would be inoperable and/or change the principle operation of the primary reference and, as such, evidences the impropriety of combining the references in the context of teaching away from their combination. See *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). Specifically, the real-time operations of Monteiro cannot be combined with the faster-than-real-time system of Schulhof in that such operations are diametrically opposed to one another. As such, one could not combine the opposing teaching of these two references with any real expectation of success.

**Identification and Routing of User Requests Based on
Average Network Throughput**

The Cited References further fail to disclose a 'computing device configured to . . . identify average network throughput between the computing device and the requesting users; and route the user requests . . . to a distribution server . . . based upon at least the average network throughput'. While Monteiro (as noted by the Examiner) discusses "two bitrate options available to the User for audio delivery", this does not disclose a computing device making an actual determination as to what

is the bandwidth between the computing device and requesting user. See Monteiro, col. 7, l. 33-34; see also Office Action, 3. As recited in the Applicant's claim, the computing device identifies the average network throughput and subsequently routes a user request to a distribution server capable of responding to the request in light of, at least, the aforementioned throughput determination. The Cited References wholly fail to identify this aspect of the Applicant's claim with respect to allocation of distribution assignments based on throughput.

Delivery Adjustments Based on Current Throughput

In this regard, the Cited References further fail to disclose 'a distribution server . . . automatically adjust[ing] delivery of the requested at least one of the one or more media files to the requesting users based on current average network throughput between the distribution server and the requesting users.' As noted above, there is no initial determination as to bandwidth between a requesting user and a computing device receiving that request. Further, there is no determination of bandwidth between a distribution server assigned the media delivery assignment and the requesting user such that media delivery may be adjusted 'on the fly' as content transmission is taking place. As such, the Cited References fail to disclose each and every element of the presently claimed invention.

Dependent Claims

If an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending there from is also non-obvious. See *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Claim 20, which is independent, is novel and non-obvious for at least the reasons as set forth above. As such, Applicant contends dependent claims 21-32 to also be non-obvious in light of *In re Fine* in that they each depend from claim 20 (either directly or via an intermediate dependent claim).

CONCLUSION

The Cited References—either alone or in combination with one another—fail to disclose each and every element of the Applicant's presently claimed invention. For example, the Cited References fail (at the least) to disclose simultaneously delivering a single copy of the requested media files in less-than-real-time. Further, the Cited References fail to disclose a computing device configured to identify average network throughput between the computing device and the requesting users and route the user requests to a distribution server based upon at least the average network throughput. Additionally, the Cited References fail to disclose a distribution server automatically adjusting delivery of the requested at least one of the one or more media files to the requesting users based on current average network throughput between the distribution server and the requesting users. The dependent claims of the present application are allowable for at least the same reason.

The Applicant further contends that any effort to combine the presently cited references would result in an inoperative combination. Thus, the Examiner has failed to evidence a *prima facie* case of obviousness not only with respect to disclosure of each cited element but also the motivation to combine the references regardless of whether they disclose the cited elements of the Applicant's presently claimed invention.

In light of the foregoing arguments, the Applicant contends that the application is in condition for allowance. The Examiner is invited to contact the Applicant's undersigned representative with any questions concerning the present amendment or the application in general.

Respectfully submitted,

By: Carla L. Gannon
Carla L. Gannon
Attorney For Applicant
Registration No. 56,358
326 South Eugene Street
Greensboro, North Carolina 27401
Telephone: (336) 275-7601
Facsimile: (336) 275-2009

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